

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

X

FIROOZ GHASSABIAN,

Petitioner,

- against -

FATOLLAH HEMATIAN, BEHDAD
HEMATIAN, HERTSEL AKHAVAN,
and CLASSICOM, L.L.C., a limited
liability company organized under the
Laws of the State of Delaware,

Respondents.

: ECF Case

: Civil Case No. 08-CIV-4400 (SAS)

: ORAL ARGUMENT REQUESTED

IN THE MATTER OF THE
ARBITRATION BETWEEN

FATOLLAH HEMATIAN, BEHDAD
HEMATIAN, HERTSEL AKHAVAN
and CLASSICOM L.L.C.,

Claimants,

v.

FIROOZ GHASSABIAN,

Respondent.

X

RESPONDENTS' NOTICE OF MOTION TO DISMISS PETITIONER'S PETITION

PLEASE TAKE NOTICE THAT upon the Declarations of Hilton Soniker, Esq.,
Fatollah Hematian, Hertsel Akhavan and David Hezghia, and the accompanying Memorandum of
Law in Support of Respondents' Motion to Dismiss Petition, and upon all other pleadings and
proceedings had in this matter, Respondents Fatollah Hematian, Behdad Hematian, Hertsel
Akhavan and Classicom, L.L.C. ("Respondents"), by and through their undersigned counsel, shall

move this Court before the Honorable Shira A. Scheindlin, United States District Judge, at Courtroom 15C of the U.S. District Court (SDNY), located at 500 Pearl Street, New York, New York, on the 24th day of July, 2008, at 9:30 a.m., or as soon thereafter as counsel may be heard, for entry of an order pursuant to FRCP Rules 12(b)(1) and (6) and 9 U.S.C. §§201 *et seq.*, dismissing Petitioner Firooz Ghassabian's ("Ghassabian") Complaint on the basis that: (i) there is a valid arbitration agreement and Respondents' claims fall within the scope of that agreement; (ii) Ghassabian has failed to seek a stay of the arbitration within twenty (20) days of service of the Demand for Arbitration, as required by New York CPLR §7503(c), and is estopped from raising as a defense to arbitration that the terms of the arbitration agreement have not been complied with; (iii) the Court lacks jurisdiction to pass upon the qualification of the arbitrators prior to their rendering an award; and (iv) for such other and further relief as may be just, proper and equitable herein.

WHEREFORE, Respondents respectfully request that this Court enter an Order dismissing Petitioner's Petition with prejudice, for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted and direct the parties to proceed to arbitration.

Dated: New York, New York
June 19, 2008

Respectfully submitted,

KAMERMAN & SONIKER P.C.
Attorneys for Respondents

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